Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	WC Docket No. 04-372
July 1, 2004	)	
Annual Access Charge Tariff Filings	)	

REBUTTAL OF THE NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

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October 29, 2004

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Summary

Contrary to claims advanced by AT&T and GCI, NECA's 2004 access rates are properly targeted to earn at the authorized rate of return for the test period. There is no basis for the Commission to make adjustments to NECA's rates to reflect forecast "misses" in previous years because the necessary adjustments are already reflected in NECA's filed rates.

Furthermore, the Commission should not adopt AT&T and GCI's suggestions to retarget NECA's 2004 switched access rates at below-authorized levels in order to compensate for higher-than-expected earnings in the earlier portions of the monitoring period. Such a requirement would violate the Commission's own rules governing refunds of overearnings and would violate legal prohibitions against retroactive ratemaking.

NECA has been forthcoming in the production of data in response to the Commission's *Designation Order*. NECA reasonably complied with the *Designation Order's* data submission requirements considering the short time allowed for response and the massive amount of data requested. In some cases where it would have been impossible to provide the requested data, NECA provided directly relevant information that was more extensive than the information requested. Further, NECA remains willing to provide supplemental data on earnings true-ups should the Commission so require.

Finally, NECA shows again that its tariff provisions governing the application of entrance facility charges are fully consistent with the Commission's rules. Revising those provisions in the manner suggested by GCI not only would involve questions that are far outside the scope of this tariff investigation, but also could result in fundamental changes

in the provision of access services to IXCs that choose to collocate their CLEC and IXC operations. Should the Commission nevertheless require NECA to revise its tariff in order to provide for application of cross-connect charges in lieu of entrance facility charges, such changes should be accomplished in the manner suggested in NECA's Direct Case and apply only prospectively.

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REBUTTAL

The National Exchange Carrier Association, Inc. (NECA) hereby files its Rebuttal to Oppositions submitted by AT&T Corp. (AT&T) and General Communication, Inc. (GCI) in the above-captioned matter.

NECA shows herein that the Commission need not make adjustments to NECA's rates to reflect forecast "misses" in previous years because the necessary adjustments have already been reflected in NECA's filed rates, which are properly targeted to earn at the authorized rate of return. NECA further shows that it has made every reasonable attempt to comply with the *Designation Order's*[1] data submission requirements, considering the short time allowed for response and the massive amount of data required. Finally, NECA shows that its tariff provisions governing the application of entrance facility charges are fully consistent with Commission rules and that the Commission should not require NECA to revise those provisions in the manner suggested by GCI.

[1] July 1, 2004 Annual Access Charge Tariff Filings, WC Docket No. 04-372, *Order Designating Issues for Investigation*, DA 04-3020 (rel. Sept. 20, 2004) (*Designation Order*).

I. ADJUSTMENTS TO NECA'S PROPOSED 2004 ACCESS RATES ARE NOT WARRANTED.

AT&T and GCI seek two different types of downward adjustments to NECA's 2004/2005 test period switched access rates. One adjustment is said to be required to offset the effects of perceived bias in NECA's rate forecasting methods, as determined by analyses of prior-period earnings reports. The second adjustment would re-target NECA's 2004/2005 switched access rates to an amount significantly below authorized levels, in an attempt to offset apparent overearnings in prior tariff periods.[2]

The Commission should not make either type of adjustment. As shown herein, NECA has already targeted its rates for the 2004-2005 tariff period to earn at the authorized 11.25%, correcting, in the process, previous forecast "misses." The second type of adjustment would violate the Commission's own rate of return monitoring rules and constitute impermissible retroactive ratemaking.

A. <u>NECA's 2004/2005 Access Rates Are Properly Targeted to Earn at Authorized Levels.</u>

Pointing to historical data presented in NECA's Direct Case, both AT&T and GCI claim that prior NECA switched access rates consistently show a tendency to overearn, and that the Commission should correct for this perceived bias by making downward adjustments to NECA's current rates. GCI specifically proposes a negative adjustment of 5.4% based on the average amount by which NECA's switched access rates of return exceeded the prescribed rate over the last three complete monitoring periods.[3]

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[2] AT&T at 11; GCI at 6, 11.

[3] GCI at 11.

Tellingly, neither AT&T nor GCI propose any adjustments to NECA's special access rates. AT&T and GCI's omission is not surprising, however, as NECA's special access rates of return show a relatively consistent pattern of underearning. According to the logic of AT&T and GCI's comments, this pattern ought to be addressed by comparable *upward* adjustments to NECA's proposed special access rates.

Neither upward nor downward adjustments are necessary, however, because prior forecast "misses" in both the switched and special access categories have already been taken into account in NECA's 2004 access filing. This occurs because NECA bases its annual access charge filings not on previous forecasts (which may have been above or below actual results), but rather on actual historical operating data.

Moreover, as explained in the Description and Justification accompanying NECA's 2004 access filing, NECA uses statistical forecasting methods that weight recent years more heavily than earlier ones. For example, NECA's traffic sensitive minutes growth forecast declined from 8.3% in 2001/2002 to -0.3% for the 2004/2005 test period. This reflects, among other factors, the shift of demand away from traditional long distance service to wireless and Internet services – trends that would not be reflected in statistical analyses of earnings results.

Information provided with NECA's filing also show that projections in a given year change to reflect the previous year's forecast misses. For example, NECA over-forecasted minutes by 3.5% in 2000/2001, which led to a 2.9% reduction in the 2001/2002 forecast. NECA's projections of revenue requirements similarly reflect recent historical trends, as documented in Vol. 2, Exhibit 5 of the NECA's 2004 Annual Filing. The projected growth rate for traffic sensitive switched access revenue requirement for the 2004/2005 test period was 1.0% per year, below the 2.3% per year average for 1999-2003. This decline reflects recent and anticipated shifts of investment away from the circuit switched network.[4]

Although NECA does not calculate rates based on prior period earnings levels, the relationship between NECA's proposed rate changes and recent rate of return levels shows that prior forecast misses are, in fact, reflected in subsequent rate filings. In the case of special access, for example, NECA filed for a 3.8 % rate increase in 2004, in recognition of continued high growth in special access revenue requirements and slowdowns in demand growth – trends that caused NECA's special access returns in 2003 to decline to a projected 9.11%. If left unaddressed, these same trends would cause NECA's special access earnings in the 2004/2005 test period again to fall below authorized levels.

As noted above, AT&T and GCI have not placed in the record any analyses of returns for special access for the obvious reason that these services have not earned, on

[4] The extent to which NECA revenue requirement forecasts ultimately affect earnings performance has also changed significantly with the introduction of new support mechanisms. For example, Interstate Common Line Support (ICLS) true-ups effectively target all Common Line earnings to authorized levels. Local Switching Support (LSS) true-ups also have an increasingly significant effect on NECA traffic sensitive switched access earnings results. LSS now makes up over 56 percent of NECA's local switching revenue requirement and 44% of the overall traffic sensitive switched access revenue requirement. *See* Vol 2., Exh 2, p 4 of 4 of NECA's 2004 Annual Access Filing. When tariff revenue requirement projections exceed actual costs, there is a corresponding reduction to LSS amounts via the true-up process, which in turn reduces switched access pool earnings since LSS is a "revenue component" in the rate of return calculation. The fact that trued-up explicit support accounts for an increasing percent of revenue requirement recovery means that there is less revenue requirement subject to recovery through access rates. Access rates, therefore, have an increasingly smaller impact on earnings levels.

average, more than the authorized rate of return, and as the 2001-2003 data provided in Exhibit 1 of NECA's Direct Case show, initial returns clearly trend downward.[5]

Similarly, NECA reduced its switched access rates by 7.1% in its 2004 filing, which, in conjunction with a 7.9% reduction for the 2003/2004 test period, should produce earnings at authorized levels in the 2004-2005 test period. These reductions – based correctly on revenue requirement and demand data that take into account historic data – *exceed* the 5.4% rate reduction that GCI proposes based on analysis of NECA prior period earnings data. There can be no plainer way to demonstrate why the Commission should not adopt proposals to adjust NECA prospective rates based on statistical extrapolations of prior-period earnings data.

NECA has demonstrated that its proposed 2004/2005 rates are reasonably targeted to earn at authorized levels. No further adjustments are needed to correct perceived bias in NECA's forecasting methods. NECA has reduced switched access rates in the last two Annual Filings significantly. These reductions account for forecast misses in prior years as well as other factors impacting demand and cost growth, and target rates to earn at the authorized return. Similarly, NECA's special access rates increase for the 2004/2005 test period should remain in effect because of the likelihood that, without the increase, special access services will not earn the authorized rate of return.

[5] To demonstrate this effect further, NECA has prepared an analysis of prior period earnings for the special access category that replicates the statistical tests performed by AT&T with respect to NECA's switched access earnings. The results of that analysis, attached hereto as Exhibit 1, show clearly that there is no systematic upward bias in the projection process for Special Access. Rather, the rates of return for Special Access tend to be below authorized levels.

B. The Commission Should Not Require NECA to Target Prospective Rates at Below-Authorized Levels.

The second type of adjustment sought by AT&T and GCI would, if adopted, would cause NECA switched access earnings for the 2004-2005 test period to fall significantly below authorized levels. This adjustment is supposedly required, in AT&T and GCI's view, to bring NECA's switched access earnings for the 2003-2004 monitoring period to within-authorized levels (as noted above, neither AT&T nor GCI propose comparable *upward* adjustments to compensate for projected underearnings in the special access category).

NECA explained in its Direct Case that such one-sided adjustments would represent a fundamental change in Commission ratemaking practices and raise serious questions of lawfulness. AT&T attempts to dismiss NECA's concerns in this regard, asserting that "the Designation Order does not state that prospective rates will be set to refund prior period overearnings . . . ."[6] A few pages later, however, AT&T abruptly reverses course, asserting that "NECA should be required to make downward adjustments to its rates for the 2004 period to bring its overall returns for the 2003-2004 period within the range of 11.25%."[7]

In support of this latter assertion, AT&T cites prior Commission decisions addressing the need for carriers to make mid-course corrections during a monitoring period in order to assure that rates earn no more than authorized levels.[8] But the decisions cited by AT&T merely require carriers to re-target rates to earn at authorized

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[6] AT&T at 2. It appears that AT&T would agree that such action would be impermissible. *See id.*

[7] *Id.* at 11.

[8] *Id.* at 12, *quoting GCI v. ACS*, 16 FCC Rcd 2834 (2001) at ¶ 5.

levels going forward – precisely what NECA has already done in its 2004 annual filing. Those decisions do not specify that carriers must target rates at below-authorized levels to balance overearnings in earlier portions of the period.[9]

Apart from violating longstanding prohibitions against retroactive ratemaking, the adjustment procedure requested by AT&T and GCI would also contradict the Commission's own rate of return monitoring rules. As both AT&T and GCI point out, the Commission's Part 65 rules establish September 30 of the year following a monitoring period as the legally controlling date for determining carrier earnings levels.[10] If earnings levels are not considered "final" until September of the year following a monitoring period, it follows that the Commission cannot at this time order NECA to reduce its rates prospectively to offset predicted overearnings during earlier portions of the monitoring period. By AT&T and GCI's own logic, any such determination must await the filing of a final Form 492 Monitoring Report in September of the year following the relevant monitoring period.[11]

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[9] For example, AT&T quotes portions of paragraph 5 of the Commission's *GCI v. ACS* decision to the effect that rate of return carriers must make "rate adjustments, if necessary, to ensure that they do not exceed their prescribed rate of return." *Id.* AT&T fails to include the final sentence of that paragraph, which makes clear that refunds may be due only "if a rate of return carrier *ultimately exceeds its rate of return at the end of the two year monitoring period.* (emphasis added).

[10] AT&T at 10, GCI at 8.

[11] Liability for refunds based on Final Form 492 earnings data, would, of course, need to be established in a proceeding based on section 205 of the Communications Act of 1934, *see, e.g.,* New England Tel. & Tel. Co. v. FCC, 826 F.2d 1101 (D.C.Cir. 1986), not in a proceeding instituted pursuant to section 204(a) of the Act. In this regard, AT&T points out that the *Designation Order* mentions section 205 as authority for this proceeding, but fails to mention that the Commission invoked section 205 authority only with respect to the third issue specified in the Designation Order (relating to whether NECA should be required prospectively to replace tariff language governing application of entrance facility charges).

In sum, the Commission should not require prospective adjustments to NECA's 2004 access rates. Adjustments to NECA's switched access rates to compensate for perceived bias in NECA's projection methods are unnecessary because NECA has already made downward adjustments that compensate for previous forecast misses. In fact, those adjustments exceed the adjustments that, according to GCI's calculations, would be required based on analyses of prior earnings levels. Nor should the Commission make adjustments to NECA's prospective rates to offset predicted overearnings for earlier portions of the monitoring period. Such adjustments would violate the Commission's rate of return monitoring rules and would constitute impermissible retroactive ratemaking.

II. NECA HAS REASONABLY COMPLIED WITH THE *DESIGNATION ORDER'S* DATA SUBMISSION REQUIREMENTS.

AT&T complains at length that NECA "provided only a fraction of the information that it was directed to produce" (AT&T at 6). In fact, NECA provided a wealth of data designed to paint a clear picture of NECA pool earnings levels, as initially reported in NECA's Form 492 filings and as affected by true-ups to member company interstate settlement data.

Consistent with the clear intent of the Commission's *Designation Order*, NECA focused its attention on true-up data that contributed most significantly to the differences between the initial Form 492 view (which is computed as of the August following a calendar year or the last year of a monitoring period) and the final view (which is computed as of the December two years following the end of a calendar year or the last year of a monitoring period) of earnings for each of the access categories for each calendar year 1993 through 2002 as well as the underlying monitoring periods.

NECA identified for each calendar year 1993 through 2002, study area data that accounted for 80 percent of the total true ups from the initial to final earnings. In addition, NECA provided explanations for the adjustments made by these study areas to the extent it had them available. Explanations for adjustments prior to 2001 are only available in paper format and could not be extracted in the time frame dictated by the *Designation Order*.

AT&T takes issue with the fact that NECA did not limit the adjustments to those changes that occurred after the submission of final cost studies.[12] NECA explained in its Direct Case, however, that it would have been impossible to isolate data associated with post-cost study data adjustments within the limited time period available.[13] NECA accordingly provided data supporting 80% of adjustments, including those that occurred between the view filed in NECA's Form 492s and the submission of each final cost study, and those between submission of each final cost study and each final true-up.[14]

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[12] AT&T at 6-7.

[13] Direct Case at 18. It may be possible to show which companies' cost studies had been "pooled" (reflecting adjustments to pooling resulting from cost studies) at the time of specific Form 492 filings versus those that had not been pooled until after the same Form 492 submission. However, NECA does not routinely correlate pooling data and Form 492 data at this level of detail (i.e., matching company-specific cost study results to discrete pool-reported adjustments underpinning earnings reported on a given Form 492.) To perform this correlation would first require manual review and compilation of many thousands of data transactions and the manual association of discrete transactions with known cost study submissions. This review and compilation would require substantial time to complete and would require extensive cross-checking to assure accuracy.

[14] *Id.*, Exhibit 3A.

The data provided by NECA provides a more complete view of material adjustments affecting reported pool earnings. As NECA pointed out in its Direct Case, adjustments reported to the pools after final cost study submissions account for only about 10% of total adjustments following submission of Form 492 data.[15] Virtually all the material adjustments that were made in calendar years 1993 through 2002 that explain the changes in earnings result from the submission of cost studies after filing Form 492, and from support true-ups. In other words, NECA provided data on adjustments that account for 80% of 100% of pool earnings impacts, rather than 80% of about 10% of pool earnings impacts. Had it been possible for NECA to limit its data submissions to the latter group, the information available to the Commission would have eliminated the most material adjustments and provided a distorted picture of the true up process.

In some instances NECA provided more data than was required. The Designation Order, for example, focuses on Form 492 category data, which is not available for average schedule companies. Nevertheless, NECA recognized that changes in demand data submitted by average schedule companies can contribute to differences in initial and final earnings results. NECA therefore provided initial and final views of average schedule settlements by calendar year by access category for those average schedule companies who showed the greatest difference in revenue requirements.

AT&T also asserts that NECA only supplied information on data adjustments that resulted in reduced pool earnings and failed to include adjustments that caused increases in pool earnings. In fact, NECA did provide data on upward adjustments if the change in pool earnings from initial view to final view was positive, as occurred in calendar year

[15] Direct Case at 18.

2002 for switched access. Study areas accounting for 80% of that increase are listed in Part 20 of 30 of Exhibit 3A.[16]

Finally, the *Designation Order* directed NECA to provide intrastate as well as interstate earnings data for its pooling companies. As explained in its Direct Case, NECA is responsible for developing and supporting interstate access rates and does not collect or maintain intrastate earnings monitoring data.

In sum, NECA supplied a substantial amount of data in its Direct Case that enables the Commission to identify major adjustments accounting for the differences in initial versus final rates of return for all interstate access categories for all of the calendar years 1993 through 2002. Considering the short time frame for data submissions and the magnitude of the information requested, NECA believes that it has been fully responsive to the Commission's requests for information. Further, NECA is willing to supplement its submissions with additional adjustment data for prior periods that it did not have time to prepare in time for inclusion with its Direct Case, but respectfully requests an opportunity to discuss with Commission staff the feasibility and administrative burdens associated with providing such additional data prior to undertaking the necessary efforts to obtain this information.

III. NECA TARIFF PROVISIONS GOVERNING ASSESSMENT OF ENTRANCE FACILITY CHARGES ARE REASONABLE AND FULLY CONSISTENT WITH APPLICABLE FCC RULES.

NECA demonstrated in its Direct Case that claims that NECA included "inappropriate demand projections" associated with entrance facility charges were unfounded. GCI's real concern is not with the rates NECA filed (which, in fact, could

[16] NECA is willing to provide information on both upward and downward adjustments for each access element for each individual year if the Commission so requests.

rise if the Commission were to accept GCI's "inappropriate demand" argument) but rather with tariff terms and conditions governing assessment of entrance facility charges – provisions that have been in effect for many years and which cannot be subject to suspension and investigation under section 204(a) of the Act.

GCI argues in response that, "because NECA's existing and projected demand for its entrance facilities are based on the practice of charging carriers like GCI for entrance facilities . . . the Commission can only determine the lawfulness of the proposed entrance facility rates by determining the lawfulness of the underlying practice." This argument, if accepted, would lead to absurd results. The rates proposed in annual access filings depend, in one way or another, on terms and conditions scattered throughout each tariff. Thus, every annual access filing would essentially open up each carrier's entire tariff to suspension and investigation, rendering meaningless the limitations set forth in section 204(a) of the Act as well as Commission rules that limit the scope of annual access filings to investigations of filed rates.

It is abundantly clear that GCI's concerns are not related to the entrance facility rates proposed in NECA's actual tariff filing but instead are directed to the lawfulness of the underlying terms and conditions relating to entrance facility charges. NECA showed in its Direct Case that its tariff provisions governing assessment of entrance facility charges are completely consistent with the Commission's rules, including sections 51.515(a) and 69.121. GCI apparently does not agree with the way those rules are currently structured, but the proper remedy for GCI in that instance is to seek a change in the rules.[17]

GCI claims, for example, that it should be able to interconnect its collocated transport facilities with the trunk side of the switch via a cross-connect charge under an interconnection agreement instead of being charged for an entrance facility under NECA's interstate access tariff. GCI seeks to provide competitive exchange access service to its long distance affiliate and other long distance carriers.[18] GCI further claims that Commission rules allow it to obtain interconnection pursuant to section 251(c)(2) to provide stand-alone exchange access and that Commission rules also prohibit ILECs from assessing access charges "on purchasers of elements that offer telephone exchange or exchange access services."

Under this rationale GCI presumably would be allowed to use other unbundled network elements (UNEs) (*e.g.* unbundled local switching) in lieu of access services to bypass NECA's switched access tariff and provide exchange access to IXCs for end users that do not receive local exchange service from GCI. This approach was rejected by the Commission when it arbitrated the rates, terms, and conditions of certain interconnection

[17] The Commission has made it abundantly clear that it will not consider issues in a tariff proceeding that should be addressed in a rulemaking docket. *See, e.g.*, Tariffs Implementing Access Charge Reform, Order Designating Issues for Investigation & *Order on Reconsideration*, 13 FCC Rcd 2249 (1998) at 8 (rejecting requests to revise rules governing determination of charges in the context of a tariff investigation); 1995 Annual Access Tariff Filings of Price Cap Carriers, *Memorandum Opinion & Order* Suspending Rates, 11 FCC Rcd 5461 (1995) (refusing to consider arguments in a tariff proceeding that FCC regulatory fees should no longer be considered exogenous changes for price cap carriers).

[18] GCI at 13.

agreements between Verizon Virginia and several CLECs.[19] In that instance, the Wireline Competition Bureau (WCB), acting on delegated authority, rejected a proposal to use UNEs obtained at TELRIC rates to provide competitive access services to IXCs for end users that do not receive their local exchange service from the exchange access provider. Consistent with NECA's assertion that the Commission's section 51.515 prohibition on access charges applies only when the requesting carrier provides both telephone exchange and exchange access service to the requesting carrier's end users, the WCB found -

> this arrangement to be inconsistent with Commission precedent establishing that, as a practical matter, a requesting carrier may not purchase UNE switching solely to provide exchange access service, without also providing local exchange service to that end user. Specifically, the Commission has held that "a carrier that purchases an unbundled switching element for an end user may not use that switching element to provide interexchange service to end users for whom that requesting carrier does not also provide local exchange service.[20]

In addition, the Commission's commingling ruling clearly envisioned that requesting carriers will continue to purchase tariffed services as well as unbundled network elements to the extent the requesting carrier's operations require exchange

[19] Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration, CC Docket No. 00-218, Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration, CC Docket No. 00-249, Petition of AT&T Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration, CC Docket No. 00-251, *Memorandum Opinion and Order,* 17 FCC Rcd 27039 (2002), *recon. denied*, 18 FCC Rcd 8467 (2004).

[20] *Id.* at ¶ 208. (footnotes omitted)

access to end users not served by its CLEC operation. The commingling regulations[21] require ILECs to allow requesting carriers to commingle UNEs and UNE combinations with switched and special access services offered pursuant to tariff on the same facility. Such is the case for GCI as described in NECA's Direct Case.[22] However, commingling does not require ILECs either to ratchet (bill a single circuit at multiple rates) or forego tariffed access revenues in favor of TELRIC based UNE rates.

Alternatively, GCI seeks to interconnect its collocated transport facilities with the trunk side of the switch via a tariffed cross-connect charge instead of being charged for an entrance facility out of NECA's interstate access tariff. GCI cites at length from the Commission's Expanded Interconnection proceeding and notes that ILECs subject to expanded interconnection are required to establish cost-based cross-connect charges.[23]

Since the Commission's Part 64, subpart N rules[24] specifically exclude NECA tariff members from the requirement to provide expanded interconnection functionality, GCI effectively seeks a rule change to extend Expanded Interconnection requirements to NECA member companies. Absent such a rule change, NECA member companies are not obligated to tariff cross connect charges unless they seek to geographically deaverage rates for transport services. To date, NECA has not received a request from ACS or any other member to tariff deaveraged rates for transport services.

For these reasons, NECA's tariff provision that requires members to charge for an entrance facility "even when the customer's serving wire center and customer-designated

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[21] 47 C.F.R. §51.309(e) – (g).

[22] Direct Case at 26-27.

[23] GCI at 14-15.

[24] 47 C.F.R. §64.1401(a).

premises are collocated" is lawful, and the demand for entrance facilities provided to collocated customers is appropriately included in the development of NECA's entrance facility rates for the 2004/2005 test period. GCI's claim should therefore be dismissed.

Should the Commission nevertheless determine otherwise, it should adopt the alternative tariff language proposed in NECA's Direct Case.[25] NECA's draft language would establish a new category of entrance facility charges that would apply in lieu of current charges, designed to recover the costs associated with the new element.[26] NECA would, however, need time to obtain and develop the necessary cost support and demand for the new element, and may need to consider adjustments to other traffic sensitive rates.

IV. CONCLUSION

NECA's 2004 access rates are properly targeted to earn at the authorized rate of return for the test period. There is, therefore, no basis for the Commission to make adjustments to NECA's rates to reflect forecast "misses" in previous years or to compensate for higher-than-expected earnings in the earlier portions of the monitoring period. Every reasonable attempt was made to comply with the *Designation Order's* data submission requirements, considering the short time allowed for response and the massive scope of data requested. NECA is, however, willing to provide supplemental data on earnings adjustments should the Commission so require. Finally, NECA tariff provisions governing the application of entrance facility charges are fully consistent with

[25] Direct Case at 28, n. 44.

[26] GCI has no apparent objection to the substance of NECA's proposed tariff provision, but does argue that revised provisions should be developed pursuant to section 69.121 of the rules (relating to Expanded Interconnection). As noted above, NECA tariff participants are not subject to Expanded Interconnection requirements.

Commission rules and there is, therefore, no basis for the Commission to require revisions to these provisions. Should the Commission determine otherwise, however, it should adopt the suggested replacement language presented in NECA's Direct Case.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, Inc.

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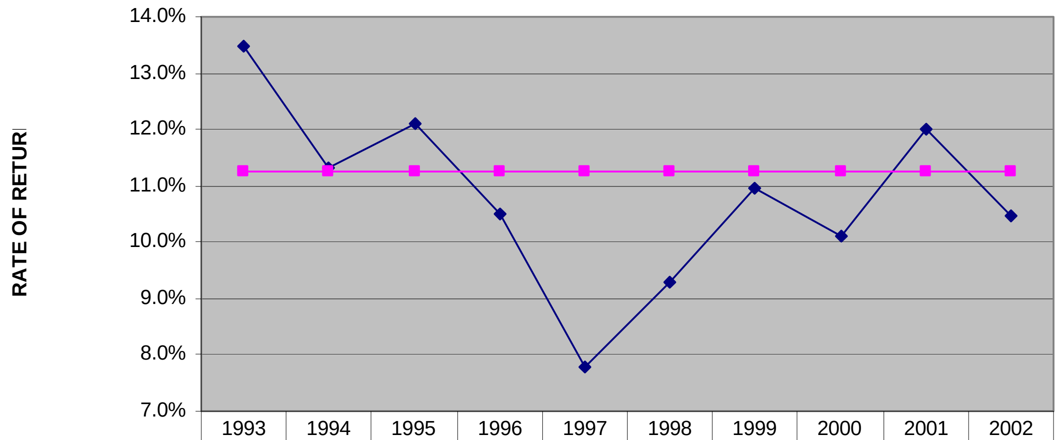
APPENDIX

NECA FINAL SPECIAL ROR



	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
SP ROR	13.48%	11.33%	12.09%	10.51%	7.78%	9.30%	10.97%	10.12%	12.01%	10.48%
Auth ROR	11.25%	11.25%	11.25%	11.25%	11.25%	11.25%	11.25%	11.25%	11.25%	11.25%

YEAR

TEST 1					TEST 2				
Company	# of obs.	# of obs. < .1025	Prob. # of obs. < 11.25% <= 6	Prob. # of obs. < 11.25% > 6 (100 - 20.51)%	Average ROR	Std. Dev. of Average ROR	Calculated t-statistic	Critical t values @ 95%	Significant Outlier
NECA	10	6	20.51%	79.49%	10.81%	0.01586	-0.8833	-1.812	No

NOTE: Data for Tests is based on data from 1993 - 2002. 2003 is not used because true-ups are expected.

CERTIFICATE OF SERVICE

I hereby certify that a copy of NECA's Rebuttal was served this 29th day of October 2004 by electronic filing or e-mail to the persons listed below.

By: /s/ Shawn O'Brien
Shawn O'Brien

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